

RULES
OF
OFFICE OF STATE ADMINISTRATIVE HEARINGS
CHAPTER 616-1-2

ADMINISTRATIVE RULES OF PROCEDURE

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Rule 1 Definitions. As used in this Chapter, the term:

(a) "ALJ" means an Administrative Law Judge appointed by the Chief State Administrative Law Judge. The term ALJ includes any Assistant ALJ, Special Assistant ALJ, Special Designated Assistant ALJ, Special Lay Assistant ALJ, Associate ALJ, and any other person appointed by the Chief ALJ to preside in a hearing.

(b) "APA" means the Georgia Administrative Procedure Act (O.C.G.A. Title 50, Chapter 13).

(c) "Chief ALJ" means the Chief State Administrative Law Judge.

(d) "Clerk" means the OSAH Administrative Hearing Clerk.

(e) "Covered Agency" means a state agency whose initial hearings are required by law to be performed by OSAH or a state agency which has contracted with OSAH for the conduct of hearings.

(f) "CPA" means the Civil Practice Act (O.C.G.A. Title 9, Chapter 11).

(g) "Final Decision" means a decision entered by an ALJ in a matter pursuant to Rule 616-1-2-.27 that is not reviewable by the Referring Agency.

(h) "Initial Decision" means a decision entered by an ALJ in a matter pursuant to Rule 27 that is reviewable by the Referring Agency.

(i) "OSAH" means the Office of State Administrative Hearings.

(j) "Person" means any individual, partnership, firm, corporation, association, or other entity.

(k) "Referring Agency" means the state agency for whom an administrative hearing is being held.

(l) "State Legal Holidays" means those days all state offices and facilities are closed by order of the Governor pursuant to O.C.G.A. §§ 1-4-1(a) and (b).

Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.01 entitled "Definitions" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995.

Rule 2 Applicability and Scope of These Rules.

(1) The Rules in this Chapter govern all hearings in "contested cases," as that term is defined in the APA, which are conducted before an ALJ.

(2) An ALJ shall afford a liberal construction of these rules insofar as they are applied to cases wherein petitioners or respondents are not represented by counsel. Moreover, at the discretion of the ALJ, the procedural requirements of these rules may be relaxed in appropriate cases where such relaxation will facilitate the resolution of the matter without prejudice to the parties and will not be inconsistent with the requirements of the APA or other applicable statute.

(3) Procedural questions arising at any stage of the proceeding which are not addressed in the APA, any other applicable law or these Rules shall be resolved at the discretion of the ALJ, as justice requires. The ALJ may consult and utilize the CPA and the Uniform Rules for the Superior Courts in the exercise of this discretion.

(4) In the event any requirement of these Rules conflicts with or is supplemented by an applicable state statute or federal statute or federal rule governing hearings for a Referring Agency, the requirement of the conflicting or supplementing state statute or federal statute or federal rule shall be applied by the ALJ either on the ALJ's own initiative or on the written notice or motion of any party.

(5) The Rules in this Chapter do not supersede any statutes or rules which regulate any activity which may take place before a hearing is referred to OSAH including how a hearing before a Referring Agency is to be initiated or requested.

| Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.02 entitled "Applicability and Scope of These Rules" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995.

Rule 3 Referral of Cases to OSAH. Unless otherwise provided by the Chief ALJ, all referrals from a Covered Agency for the conduct of an administrative hearing by OSAH shall be made on OSAH Form 1, a copy of which is appended to these Rules as Attachment A. The Chief ALJ may prescribe a different form for different Covered Agencies or different types or classes of cases and may authorize the transmittal of multiple cases on a single form. In the event a case is referred to OSAH unaccompanied by the form prescribed by this Rule or the Chief ALJ, or is accompanied by a form which is incomplete, the case may be returned to the Covered Agency at the sole discretion of the Chief ALJ.

Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.03 entitled "Request for OSAH to Conduct Hearings" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995. **Amended:** Rule retitled "Referral of Cases to OSAH" F. Feb. 27, 1997; eff. Mar. 19, 1997.

Rule 4 Filing and Submission of Documents.

(1) All submissions authorized or required to be filed with OSAH or an ALJ under this Chapter shall be filed on 8½ by 11 inch paper with the Clerk. Submissions shall be deemed filed on the date on which they are received by the Clerk or the official postmark date such document was mailed, properly addressed to the Clerk with postage prepaid, whichever date comes first. Submissions may also be filed by facsimile machine or other electronic means.

(2) The office hours of the Clerk shall be 8:30 a.m. to 4:30 p.m., Monday through Friday, except State legal holidays.

(3) All submissions shall be signed by the person making the submission, or by an attorney or other authorized agent or representative, and shall state the name, address, telephone number and representative capacity of the person making the submission. The signature of an attorney or party shall constitute a certificate that the signer has read the submission and that it is not interposed for delay or any improper purpose.

(4) All legal authority referred to or in any way relied upon in any submission and not already a part of the record shall be included in full and may not be incorporated by reference. This requirement does not apply to published decisions of the Georgia appellate courts, the Official Code of Georgia Annotated, Georgia Laws, rules and regulations published by the Secretary of State of Georgia, and all federal statutes, regulations, and published decisions.

(5) Failure to comply with this Rule or any other requirement of this Chapter relating to the form or content of submissions to be filed may result in the noncomplying submission being excluded from consideration. If, on motion by any party or on the ALJ's own motion, the ALJ determines that a submission fails to meet any requirement of this Chapter, the ALJ may direct the Clerk to return the submission by mail together with a reference to the applicable Rule(s). A party whose submission has been returned shall have 10 days from the date the submission is mailed back by the Clerk within which to conform the submission to the applicable Rule(s) and refile.

| Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.04 entitled "Filing and Submission of Documents" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995. **Amended:** F. Dec. 12, 2003; eff. Jan. 1, 2004.

Rule 5 Computation of Time.

(1) Computation of any period of time referred to in these Rules shall begin with the first day following the day on which the act which initiates such period of time occurs. When the last day of the period so computed is a day on which the office of the Clerk is closed, the period shall run until the end of the following business day.

(2) Whenever a party has the right or is required to do some act or take some proceedings after the service of notice or other paper, other than process, upon the party by another party within a period prescribed by these Rules and not otherwise specified by law, three days shall be added to that prescribed period if the notice or paper is served by mail.

Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.05 entitled "Computation of Time" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995. **Amended:** F. Dec. 12, 2003; eff. Jan. 1, 2004.

Rule 6 Changes of Time. For good cause shown, an ALJ may change, either on the ALJ's own motion or on the motion of any party, any time limit prescribed or allowed by these Rules that is not otherwise specified by law. The ALJ shall notify all parties of any determination to change any time limit.

| Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.06 entitled "Changes of Time" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995.

Rule 7 Burden of Proof.

(1) The agency party shall bear the burden of proof in all matters except that:

(a) In any case involving the imposition of civil penalties, an administrative enforcement order or the revocation, suspension, amendment, or non-renewal of a license, the holder of the license and the person from whom civil penalties are sought or against whom an order is issued shall bear the burden as to any affirmative defenses raised by them;

(b) Any party challenging the issuance, revocation, suspension, amendment, or non-renewal of a license who is not the licensee shall bear the burden;

(c) Any applicant for a license that has been denied shall bear the burden. Any licensee that appeals the conditions, requirements, or restrictions placed on a license shall bear the burden; and

(d) Any potential or actual recipient of a public assistance benefit shall bear the burden unless the case involves an agency action reducing, suspending, or terminating a benefit.

(2) The ALJ may either on the ALJ's own motion or on motion of any party and by notice to the parties at least three days prior to the hearing where practicable but in any event before the start of the hearing, determine that the law or justice requires a different placement of the burden of proof.

Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.07 entitled "Burdens of Persuasion and Going Forward" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995. **Amended:** F. Feb. 27, 1997; eff. Mar. 19, 1997. **Amended:** R. Retitled "Burden of Proof." F. Dec. 12, 2003; eff. Jan. 1, 2004.

Rule 8 Amendments to Pleadings. In the event any pleading is required by an ALJ or Referring Agency statute or rule, any party may amend such a pleading without leave of the ALJ until the tenth day prior to the date set for hearing on the matter or until the entry of a prehearing order pursuant to Rule 14(3), whichever occurs first. Thereafter a party may amend his pleadings only by written consent of the adverse party or by leave of the ALJ for good cause shown. If an amendment is made to any pleading to which a response or reply is required, a response or reply to such amendment shall be filed within 7 days after service of the amendment unless otherwise ordered by the ALJ.

| Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.08 entitled "Amendments to Pleadings" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995.

Rule 9 Notice of Hearing.

(1) As soon as practicable after the receipt of a request from a Covered Agency that OSAH conduct a hearing and the filing of any responsive pleading(s), the ALJ shall issue a notice of hearing including:

- (a) the time, place, and nature of the hearing;
- (b) the legal authority and jurisdiction pursuant to which the hearing was requested;
- (c) the specific laws and rules involved;
- (d) a short and plain statement of the matters asserted by the parties;
- (e) the right of parties to subpoena witnesses and documentary evidence, to be represented by legal counsel, and to respond and present evidence on all issues involved; and
- (f) the potential consequences of a failure to attend a hearing as set forth in Rule 30(5).

(2) If the ALJ is unable to state the matters in detail on the basis of the pleadings filed, the notice may be limited to a statement of the issues involved. Thereafter, the ALJ may require more detailed pleadings and, upon the written application of a party, the ALJ shall furnish, or shall require the appropriate party to furnish, a more detailed statement. The notice may incorporate by reference information set forth in the petition, the responsive pleading(s), a prehearing order, or any other material included in the record of the matter at issue. Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.09 entitled "Notice of Hearing" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995.

Rule 10 Ex Parte Communications.

(1) Commencing with the filing of a request that OSAH conduct a hearing, no person shall communicate ex parte with any ALJ relating to the merits of the proceeding without the knowledge and consent of all other parties to the matter until the matter is no longer pending in any administrative or judicial forum; provided that:

(a) An ALJ may communicate with another ALJ relating to the merits of cases assigned to either ALJ at any time.

(b) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the ALJ reasonably believes that no party will gain procedural or tactical advantage as a result of the ex parte communication, and

(ii) the ALJ makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(2) If an ALJ receives a communication prohibited by this Rule, the ALJ shall file with the Clerk any written communication received and a memorandum stating the substance of any oral communication received. The Clerk shall forthwith notify all parties of the receipt of such communication and its availability for inspection.

Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.10 entitled "Ex Parte Communications" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995.

Rule 11 Service.

(1) A party filing any submission shall simultaneously serve a copy of the submission upon each party of record. Service shall be by mail or personal delivery. Service by mail shall be complete upon mailing by first class mail, with proper postage attached, to a party's address of record.

(2) Every submission shall be accompanied either by an acknowledgment of service from the person served or his authorized agent for service or by a certificate of service stating the date, place and manner of service and the name and address of the persons served.

(3) The Clerk shall maintain and upon request furnish to parties of record in a matter a list containing the name, service address, and telephone number of each other party or its attorney or duly authorized representative.

Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.11 entitled "Service" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995. **Amended:** F. Feb. 27, 1997; eff. Mar. 19, 1997.

Rule 12 Consolidation and Severance.

(1) In proceedings involving common issues of law or fact, whenever it appears to the ALJ that a joint hearing would serve to expedite or simplify consideration of those issues and that no party would be prejudiced thereby, the ALJ may, upon motion of any party or the ALJ, consolidate such proceedings for hearing on any or all of the matters at issue in such proceedings.

(2) Whenever the ALJ determines that it would be more conducive to an expeditious, full and fair hearing for any party or issue to be heard in separate proceedings, the ALJ may, upon motion of any party or the ALJ, sever the party or issue for such separate hearing.

| Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.12 entitled "Consolidation and Severance" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995.

Rule 13 Substitution of Parties; Intervention.

(1) The ALJ may, upon motion, permit such substitution of parties as justice requires.

(2) Any person seeking to intervene shall file a motion in accordance with Rule 16 stating therein the specific grounds upon which intervention is sought and attaching a pleading setting forth the claim or defense for which intervention is sought. The grant or denial of such a motion shall be governed by the APA. In order to avoid undue delay or prejudice to the adjudication of the rights of the original parties, the ALJ may limit the factual or legal issues which may be raised by an intervenor.

Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.13 entitled "Substitution of Parties; Intervention" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995.

Rule 14 Prehearing Conferences.

(1) The ALJ may, either on the ALJ's own initiative or at the request of any party, direct the parties or their attorneys or duly authorized representatives to appear at a specified time and place for one or more conferences before or during a hearing or to submit written proposals or correspondence for the purpose of considering any of the matters set forth in paragraph (2) of this Rule. At the discretion of the ALJ, prehearing conferences may be conducted in whole or in part via telephone conferences.

(2) In conferences held or in proposals submitted pursuant to paragraph (1) of this Rule, the following matters may be considered:

- (a) settlement of the matter;
- (b) the use of a schedule for the completion of prehearing procedures and the submission and disposition of all prehearing motions;
- (c) simplification, clarification, amplification, or limitation of the issues;
- (d) the identification of documents expected to be tendered by any party;
- (e) admissions and stipulations of facts and of the genuineness and admissibility of documents;
- (f) the identification of persons expected to be called as witnesses by any party and the substance of their anticipated testimony;
- (g) the identification of expert witnesses expected to be called by any party to testify and the substance of the facts and opinions to which the expert witness is expected to testify and a summary of the grounds for each opinion;
- (h) matters of which official notice by the ALJ is sought;
- (i) objections to the introduction into evidence at the hearing of any written testimony, documents, papers, exhibits or other submissions proposed by any party; and
- (j) such other matters as may expedite the adjudication of the matter or that the ALJ otherwise deems appropriate.

(3) Based upon prehearing conferences or proposals submitted pursuant to paragraph (1) of this Rule, the ALJ may issue a prehearing order containing the issues not disposed of by admissions or agreements of the parties, those facts in dispute and not in dispute, the witnesses and documents the parties intend to tender, the matters for which the parties seek official notice, and such other matters as may expedite the adjudication of the matter. Issues, factual matters, witnesses and documents not included in the prehearing order shall not be considered, allowed to testify, or admitted into evidence over the objection of any party unless the

prehearing order is amended by the ALJ. Amendments of the prehearing order may be made until the completion of the hearing for good cause shown including excusable neglect and to add newly discovered evidence or witnesses or to add rebuttal evidence or witnesses when the need for such could not have been reasonably foreseen prior to the entry of the prehearing order. In determining whether to allow an amendment to the prehearing order the ALJ may consider the prejudice imposed upon the parties by the allowance or disallowance of the proposed amendment.

Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.14 entitled "Prehearing Conferences" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995.

Rule 15 Summary Determination.

(1) Any party may move, based on supporting affidavits or other probative evidence, for a summary determination in its favor upon any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination. There shall be included in the motion or annexed thereto a short and concise statement of each of the material facts as to which the moving party contends there is no genuine issue for determination. Such a motion must be filed and served on all parties no later than 10 days after the filing of the prehearing order or 30 days before the date set for hearing, whichever is later; provided that upon good cause shown the motion may be filed at any time before the close of the hearing.

(2) Any party may file and serve a response to a motion for summary determination or a counter motion for summary determination within 20 days after service of the motion for summary determination. The response shall include a short and concise statement of each of the material facts as to which it is contended there exists a genuine issue for determination.

(3) When a motion for summary determination is made and supported as provided in this Rule, a party opposing the motion may not rest upon mere allegations or denials, but must show, by affidavit or other probative evidence, that there is a genuine issue of material fact for determination in the hearing.

(4) Affidavits shall be made upon personal knowledge, shall set forth facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto and served therewith. Where facts necessary for summary determination are a matter of expert opinion, such facts may be resolved on the basis of uncontroverted affidavits or testimony of expert opinion.

(5) The ALJ may set the motion for oral argument and call for the submission of proposed conclusions of law, findings of fact and briefs. If the period required to rule upon the motion will extend beyond the date set for the hearing, the ALJ may, on the ALJ's own initiative, continue the hearing until the ALJ rules upon the motion.

(6) The ALJ may determine that the matter may better be resolved via an evidentiary hearing and is inappropriate for resolution by a summary determination motion. If the ALJ decides to deny a summary determination motion, the ALJ shall notify the parties in writing of that determination.

(7) If all factual issues are decided by summary determination, no hearing will be held and the ALJ shall prepare an Initial or Final Decision under Rule 27. If summary determination is denied or if partial summary determination is granted, the ALJ shall issue a memorandum opinion and order, interlocutory in nature, and the hearing will proceed on the remaining issues and factual matters still in dispute.

| Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.15 entitled "Summary Determination" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995. **Amended:** F. Feb. 27, 1997; eff. Mar. 19, 1997. **Amended:** F. Dec. 12, 2003; eff. Jan. 1, 2004.

Rule 16 Motions.

(1) An application to the ALJ for an order requiring any party to take any action or for the entry of any interlocutory ruling shall be made by motion. Unless made during the hearing, motions shall be in writing, shall state specifically the grounds therefor, and shall describe the action or order sought. A copy of any written motion shall be served upon all parties in accordance with Rule 11.

(2) Within 10 days after service of any written motion, any party to the proceedings may file a response to the motion. The time for response may be shortened or extended by the ALJ for good cause shown. Any party desiring resolution of a motion prior to the expiration of the 10-day response period shall file a written request for expedited consideration with the motion.

(3) Unless otherwise provided by the ALJ or a rule in this Chapter relating to a specific type of motion, all motions shall be filed at least 10 days prior to the date set for hearing unless the need or opportunity for the motion could not reasonably have been foreseen 10 days prior to said date in which case the motion shall be filed or presented as soon as the need or opportunity for the motion becomes reasonably foreseeable.

(4) All motions and responses shall include or be accompanied by citations of supporting authorities and, when a motion depends upon factual allegations, supporting affidavits or citations to evidentiary materials of record.

(5) The ALJ may, either at the ALJ's own initiative or at the request of any party, determine whether the nature and complexity of the motion justifies a hearing on the motion and notify the parties accordingly. A request for a hearing on a motion must be made in writing and filed by the date the response to the motion is to be filed. Notice of hearing on a motion shall be given by the ALJ at least 5 days prior to the date set for the hearing. At the discretion of the ALJ, such hearings may be conducted, in whole or in part, via telephone. If a hearing on a motion is not requested or deemed justified, the ALJ shall rule upon the motion forthwith.

(6) Multiple motions may be consolidated for hearing or heard at a prehearing conference. The ALJ may call for the submission of briefs, for oral argument, or both, either in support of or in opposition to any motion. Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.16 entitled "Motions" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995. **Amended:** F. Feb. 27, 1997; eff. Mar. 19, 1997.

Rule 17 Withdrawal of Request for Hearing; Settlement.

(1) The party requesting the hearing may withdraw a request for hearing at any time whereupon the ALJ shall enter an order dismissing the matter.

(2) The parties may agree to settle the matters in dispute at any time whereupon the ALJ shall enter an order dismissing the matter.

| Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.17 entitled "Withdrawal of Request for Hearing or Settlement" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995. **Amended:** F. Dec. 12, 2003; eff. Jan. 1, 2004.

Rule 18 Evidence; Official Notice.

(1) As provided in the APA, the ALJ shall apply the rules of evidence as applied in the trial of civil nonjury cases in the superior courts and may, when necessary to ascertain facts not reasonably susceptible of proof under such rules, consider evidence not otherwise admissible thereunder if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. At the discretion of the ALJ, such evidence which may be admitted includes the following:

(a) records, reports, statements, plats, maps, charts, surveys, studies, analyses or data compilations, in any form, of public offices or agencies, setting forth (i) the activities of the office or agency, or (ii) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, or (iii) factual findings resulting from an investigation or research not performed in conjunction with the matter being heard and carried out pursuant to authority granted by law, unless its probative value cannot be determined or it lacks trustworthiness due to the sources of information or other circumstances;

(b) reports, records, statements, plats, maps, charts, surveys, studies, analyses or data compilations after testimony by an expert witness that the witness prepared such document and that it is correct to the best of the witness' knowledge, belief and expert opinion;

(c) to the extent called to the attention of an expert witness upon cross-examination or relied upon by the witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by official notice;

(d) any medical, psychiatric, or psychological evaluations or scientific or technical reports, records, statements, plats, maps, charts, surveys, studies, analyses or data compilations of a type routinely submitted to and relied upon by the Referring Agency in the normal course of its business; and

(e) documentary evidence in the form of copies if the original is not readily available, if its use would unduly disrupt the records of the possessor of the original, or by agreement of the parties. Upon request, parties shall have an opportunity to compare the copy with the original. Documentary evidence may also be received in the form of excerpts, charts, or summaries when, in the discretion of the ALJ, the use of the entire document would unnecessarily add to the record's length. The entire document shall be made available for examination or copying, or both, by other parties at a reasonable time and place.

(2) Where practicable a copy of each exhibit identified or tendered at the hearing shall be furnished to the ALJ and the other parties when first presented at the hearing.

(3) The ALJ shall give effect to statutory presumptions and the rules of privilege recognized by law.

(4) If scientific, technical or other specialized knowledge may assist the ALJ to understand the evidence or

to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. The expert may testify in terms of opinion or inference and give the reasons therefor without prior disclosure of the underlying facts or data, unless the ALJ requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

(5) The ALJ shall have the discretion to authorize or require the submission of direct testimony in written form. Unless otherwise ordered by the Judge, a party submitting such testimony in support of an issue on which it has the burden of proof shall file and serve the testimony upon all parties no less than 15 days before the hearing. All other such testimony shall be filed and served upon all parties no less than 5 days before the hearing. The admissibility of the evidence contained in written testimony shall be subject to the same rules as if the testimony were produced under oral examination. The witness presenting the statement shall swear to or affirm the statement at the hearing and shall be subject to full cross-examination during the course of the hearing.

(6) Whenever any oral testimony sought to be admitted is excluded by the ALJ, the proponent of the testimony may make an offer of proof by means of a brief statement on the record describing the excluded testimony. Whenever any documentary or physical evidence or written testimony sought to be admitted is excluded, it shall remain a part of the record as an offer of proof.

(7) All objections shall include a statement of the legal basis for the objection and shall be made promptly or deemed waived. Parties shall be presumed to have taken exception to an adverse ruling. No objection shall be deemed waived by further participation in the hearing.

(8) Official notice may, in the discretion of the ALJ, be taken of judicially recognizable facts. Any documents officially noticed shall be admitted into the record of the hearing. All parties shall be notified either prior to or during the hearing of the material noticed and any party shall on a timely request be afforded an opportunity to contest the matters of which official notice is taken.

(9) The ALJ may take official notice of the contents of policy and procedure manuals promulgated by State agencies for which OSAH conducts hearings. Unless such manuals have been adopted in accordance with the rulemaking procedures set out in O.C.G.A. § 50-13-4, the ALJ shall cause the notice of hearing to identify such manuals by name and by publishing agency, to indicate that official notice will be taken of such manuals subject to the opportunity to contest such materials pursuant to paragraph (8) of this Rule, and to notify all parties where copies of the manuals may be inspected. Any party may introduce into evidence copies of particular portions of any manual officially noticed under this Rule upon which the party relies without further authentication. In addition, the ALJ or any party may incorporate material from any manual so noticed in a brief, motion, pleading, order or decision by quotation or paraphrase thereof, by reference, or otherwise. Official notice may also be taken of any fact alleged, presented, or found in any other hearing before an ALJ, or of the status and disposition of any such hearing; provided, that any party shall on timely request be

afforded an opportunity to contest the matters of which official notice is taken.

(10) The weight to be given to any evidence shall be determined by the ALJ based upon its reliability and probative value.

Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.18 entitled " Evidence; Official Notice" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995. **Amended:** F. Dec. 12, 2003; eff. Jan. 1, 2004.

Rule 19 Subpoenas and Notices to Produce.

(1) The ALJ shall have the authority to issue subpoenas requiring the attendance and testimony of witnesses and the production of objects or documents at depositions or hearings provided for by these Rules.

(2) Requests for subpoenas shall be in writing and filed at least 5 days prior to the hearing or deposition at which the attendance of the witness or the production of documents is sought, shall be served upon all parties, and shall identify the witnesses whose testimony is sought or the documents or objects sought to be produced. Every subpoena shall be issued by the ALJ under the seal of OSAH and shall state the title of the action. The party requesting the subpoenas shall be responsible for filling in the subpoenas in a manner consistent with the request for subpoenas and serving the same sufficiently in advance of the hearing to secure the attendance of the witness or the availability of the witness' testimony on deposition at the time of the hearing.

(3) Any party, other than the Referring Agency, which is not represented by counsel may be relieved by the ALJ of the requirements of paragraph (2) above other than the service requirements. At the discretion of the ALJ, such a party may obtain subpoenas by orally providing the Clerk with the names of the persons desired to be subpoenaed and a description of the testimony or documents or objects sought. If such a request for subpoenas is made orally and approved by the ALJ, the Clerk shall reduce the request to writing and shall have a copy of the request served upon all other parties.

(4) A subpoena may be served at any place within this State and by any sheriff, by his deputy, or by any other person not less than 18 years of age. Proof of service may be shown by return or certificate endorsed on a copy of the subpoena. Subpoenas may also be served by registered or certified mail, and the return receipt shall constitute prima-facie proof of service. Service upon a party may be made by serving his counsel of record. Fees and mileage shall be paid to the recipient of a subpoena in accordance with O.C.G.A. §24-10-24.

(5) Once issued, a subpoena may be quashed by the ALJ if it appears that the subpoena is unreasonable or oppressive, or that the testimony or documents or objects sought are irrelevant, immaterial or cumulative and unnecessary to a party's preparation and presentation of its position at the hearing, or that for other good reasons basic fairness dictates that the subpoena should not be enforced. The ALJ may also condition denial of a motion to quash a subpoena upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the documents or objects.

(6) Once issued and served, unless otherwise conditioned or quashed, a subpoena shall remain in effect until the close of the hearing or until the witness is excused, whichever comes first.

(7) Where a party desires to compel production of documents or objects in the possession, custody, or control of another party, in lieu of serving a subpoena under this Rule, the party desiring the production may serve a notice to produce upon the other party. Service may be perfected in accordance with paragraph (4) above, but no fees or mileage shall be allowed therefor. Paragraph (5) above shall also apply to such notices. The notice shall be in writing, signed by the party seeking production of the evidence, or his attorney, and

shall be directed to the opposite party or his attorney. A copy of any notice to produce shall be filed simultaneously with the Clerk.

Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.19 entitled "Subpoenas" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995. **Amended:** Rule retitled "Subpoenas and Notices to Produce." F. Feb. 27, 1997; eff. Mar. 19, 1997.

Rule 20 Depositions and Written Questions to Secure Testimony.

(1) Any time during the course of a proceeding, the ALJ may, in the ALJ's discretion, order that the testimony of a witness be taken by deposition or on written questions. Application to take a deposition in lieu of personal appearance at the hearing shall be made by motion filed with the Clerk and served upon all parties in accordance with Rule 11. Such motion shall state the name and address of the witness, the time when, the place where and the subject matter about which the witness would be deposed, the relevance of such testimony, and the specific reason why the witness cannot or will not appear to testify at the hearing.

(2) In the exercise of the ALJ's discretion in deciding whether to order testimony by deposition the ALJ may consider, among other factors:

(a) whether requiring the appearance of a witness subject to subpoena would endanger the witness' health or work an undue hardship;

(b) whether a showing has been made that a non-resident potential witness who is not subject to subpoena in this State and is willing to appear voluntarily to be deposed in the jurisdiction of the witness' residence would be subject to being compelled to appear and be deposed under any law in the jurisdiction of the witness' residence (e.g., a Uniform Foreign Depositions Act); or

(c) whether ordering the taking of testimony by deposition will result in an undue burden on any other party, an undue delay in the proceeding, or any injury to other parties from the delay.

(3) If the ALJ orders testimony by deposition, the ALJ may specify whether the scope of examination upon deposition should be limited in any way, and if so, how.

(4) Procedures for oral depositions to secure testimony shall be as follows:

(a) Examination and cross-examination of a deponent shall proceed under the same rules of evidence applicable to hearings under this Chapter. Each deponent shall be duly sworn by an officer authorized to administer oaths by the laws of the United States or the place where the examination is held and the deponent's testimony shall be recorded and transcribed. Any objections made at the time of the deposition to the qualifications of the officer taking the deposition, to the manner of the taking of the deposition, to the evidence presented, to the conduct of any party, or any other objection to the proceedings shall be recorded and included in the transcript. Evidence objected to shall be taken subject to the objection.

(b) Any error or irregularity in the notice of taking testimony by deposition shall be deemed waived unless written objection thereto is filed with the Clerk and served upon all parties prior to the deposition in accordance with Rule 11. Any objection relating to the qualifications of the officer before whom the deposition is to be taken shall be deemed waived unless made before the deposition begins or as soon thereafter as the alleged lack of qualification becomes known or could be discovered in the exercise of reasonable diligence.

(c) Any objection to the competency of a witness or to the competency, relevancy, or materiality of

testimony is not waived by failure to make it before or during the deposition unless the ground of the objection is one which might have been obviated or removed if presented at the time. Any error or irregularity occurring during the taking of the deposition in the administering of the oath or affirmation, the manner of the taking of the deposition, the form of questions or the answers thereto, the conduct of any party, or any error of a kind which might be obviated, removed or cured if timely raised, shall be deemed waived unless reasonable objection thereto is made at the deposition.

(d) Any error or irregularity in the manner in which the testimony is transcribed or the deposition is prepared, certified, transmitted, filed or otherwise dealt with by the officer taking the deposition shall be deemed waived unless a motion to strike all or a part of the said deposition is made with reasonable promptness after such error or irregularity is, or in the exercise of reasonable diligence should have been, ascertained.

(e) The deposition shall be transcribed, certified by the officer taking the same, and filed with the Clerk. Any party who contends that the transcript does not truly or fully disclose what transpired at the deposition shall file a notice with the Clerk specifying any alleged errors and omissions within 10 days of the filing of the deposition. If the parties are unable to agree as to the alleged errors and omissions, the ALJ shall set the matter down for hearing with notice to all parties and shall resolve the differences so as to make the record conform to the truth.

(f) Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party. Copies may be substituted for originals if each party is given an opportunity to compare the proffered copy with the original to verify its correctness.

(5) Application to take testimony by written questions shall be made and considered in the same manner as prescribed for depositions in paragraphs (1), (2) and (3) of this Rule. If the ALJ orders the taking of testimony on written questions, each written question shall be answered separately and fully in writing under oath, unless objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers shall be signed by the person making them, and any objections shall be signed by the attorney making them.

(6) Subject to appropriate rulings on objections, a deposition or written questions and answers shall be received in evidence as if the testimony contained therein had been given by the witness before the ALJ.

(7) Whenever used in this Rule, the word "witness" shall be construed to include parties.
Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.20 entitled "Depositions and Written Questions to Secure Testimony" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995.

Rule 21 Nature of Proceedings.

(1) In any hearing conducted under this Chapter, the ALJ shall make an independent determination on the basis of the competent evidence presented at the hearing. Except as provided in Rule 29, the ALJ may make any disposition of the matter as was available to the Agency.

(2) If a party includes in its pleadings a challenge to the regularity of the process by which the Agency reached a decision, the ALJ shall take evidence and reach a determination on such a challenge at the outset of the hearing. The party making such a challenge shall have the burden of proof. If the ALJ finds the challenge meritorious, the ALJ may remand the matter to the Agency.

(3) The hearing shall be de novo in nature and the evidence on the issues in any hearing is not limited to the evidence presented to or considered by the Referring Agency prior to its decision.

(4) Unless otherwise provided by federal or state statute or rule, the standard of proof on all issues in a hearing shall be a preponderance of the evidence.

| Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.21 entitled "Nature of Proceedings" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995. **Amended:** F. Dec. 12, 2003; eff. Jan. 1, 2004.

Rule 22 Hearing Procedure.

(1) The ALJ shall conduct a fair and impartial hearing, take action to avoid unnecessary delay in the disposition of the proceedings, and maintain order. For these purposes, the ALJ may:

- (a) arrange for and issue notices of the date, time, and place of hearings and conferences;
- (b) establish the methods and procedures to be used in the development of the evidence;
- (c) hold conferences to settle, simplify, determine, or strike any of the issues in a hearing, or to consider other matters that may facilitate the expeditious disposition of the hearing;
- (d) administer oaths and affirmations;
- (e) regulate the course of the hearing and govern the conduct of the participants;
- (f) examine witnesses called by the parties;
- (g) rule on, admit, exclude, or limit evidence;
- (h) establish the time for filing motions, testimony, and other written evidence, exhibits, briefs, proposed findings of fact and conclusions of law, and other submissions;
- (i) rule on motions and other procedural matters before the ALJ, including but not limited to motions to dismiss for lack of jurisdiction or for summary determination in accordance with Rule 15;
- (j) order that the hearing be conducted in stages whenever the number of parties is large or the issues are numerous and complex;
- (k) allow such cross-examination as may be required for a full and true disclosure of facts;
- (l) order that any information so entitled under applicable state or federal rule or statute be treated as confidential information and be accorded the degree of confidentiality required thereby;
- (m) reprimand or exclude from the hearing any person for any indecorous or improper conduct committed in the ALJ's presence;
- (n) subpoena and examine any witnesses or evidence the ALJ believes necessary for a full and complete record; and
- (o) take any action not inconsistent with this Chapter or the APA for the maintenance of order at the hearing

and for the expeditious, fair, and impartial conduct of the proceeding.

(2) When two or more parties have substantially similar interests and positions, the ALJ may limit the number of attorneys or other party representatives who will be permitted to cross-examine and to argue motions and objections on behalf of those parties. Attorneys may, however, at the ALJ's discretion, engage in cross-examination relevant to matters which, in the ALJ's opinion, have not been adequately covered by previous cross-examination.

(3) Whenever any party raises issues under either the Georgia or United States Constitution, the sections of any laws or rules constitutionally challenged and any constitutional provisions such laws or rules are alleged to violate must be stated with specificity. In addition, an allegation of unconstitutionality must be supported by a statement either of the basis for the claim of unconstitutionality as a matter of law or of the facts under which the party alleges that the law or rule is unconstitutional as applied to the party. Although the ALJ is not authorized to resolve constitutional challenges to statutes or rules, the ALJ may, in the ALJ's discretion, take evidence and make findings of fact relating to such challenges.

(4) Any hearing which is required or permitted hereunder may be conducted by utilizing remote telephonic communications if the record reflects that all parties have consented to the conduct of the hearing by use of such communications and that such procedure will not jeopardize the rights of any party to the hearing.

(5) In proceedings before an ALJ, if any party or an agent or employee of a party disobeys or resists any lawful order or process; or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document; or refuses to appear after having been subpoenaed; or, upon appearing, refuses to take the oath or affirmation as a witness; or after taking the oath or affirmation, refuses to testify; or disobeys any other order issued by an ALJ, any party may apply to, and the ALJ shall certify the facts to, the superior court of the county where the offense is committed for appropriate action, including a finding of contempt.

| Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.22 entitled "Hearing Procedure" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995.

Rule 23 Record of Hearings.

(1) All intermediate rulings, orders and notices issued by the ALJ, all pleadings and motions, all recordings or transcripts of oral hearings or arguments, all written direct and rebuttal testimony, any other data, studies, reports, documentation, information and other written material of any kind submitted in the proceedings, a statement of matters officially noticed, all proposed findings, conclusions and briefs as well as the Initial or Final Decision shall be a part of the hearing record and shall be available to the public, except as provided in any applicable federal or State law or rule according confidentiality, in the office of the Clerk as soon as received in that office.

(2) Evidentiary hearings shall be either stenographically reported verbatim or tape recorded. Upon written request, a transcript of any oral proceeding or part thereof shall be furnished to any party at the requesting party's expense.

(3) All documentary and physical evidence shall be retained by the Clerk unless and until the record is transmitted to the Referring Agency pursuant to Rule 33.

Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was E on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-23 entitled "Record of Hearings" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995. **Amended:** F. Feb. 27, 1997; eff Mar. 19, 1997.

Rule 24 Proposed Findings of Fact, Conclusions of Law and Briefs. At the conclusion of the hearing, the ALJ may require the parties to submit proposed findings, conclusions and briefs in support thereof. If required, the ALJ shall specify the date by which they shall be filed with the Clerk and served on all parties. Reply briefs may be allowed in the discretion of the ALJ.

| Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.24 entitled "Proposed Findings of Fact, Conclusions of Law and Briefs" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995.

Rule 25 Newly Discovered Evidence. Prior to the entry of an Initial or Final Decision, any party may move the ALJ for an order allowing the introduction of additional evidence on the basis that said evidence is newly discovered and was not discoverable in the exercise of reasonable diligence at the time of the hearing. If the ALJ determines that such evidence is proper newly discovered evidence and may materially impact upon the decision to be rendered, the ALJ shall hear and receive such evidence in the manner prescribed for the receipt of evidence by these Rules.

Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was £ on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.25 entitled "Newly Discovered Evidence" adopted. F. Jun. 30, 1996; eff. Jul. 20, 1995. **Amended:** F. Feb. 3, 1997; eff. Mar. 19, 1997.

Rule 26 Closure of Hearing Record. Except as provided in this Rule or unless otherwise ordered by the ALJ, the record shall be closed at the conclusion of the evidentiary hearing. If the ALJ requests the preparation of a transcript or requires or authorizes the filing of proposed findings of fact, conclusions of law, or post-hearing briefs, the record shall be deemed closed upon the receipt by the Clerk of the transcript or upon the expiration of the time allowed for the required or authorized filings, whichever date comes last.

| Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.26 entitled "Closure of Hearing Record" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995.

Rule 27 Initial or Final Decision. The ALJ shall review and evaluate all the evidence as well as any interlocutory rulings, and shall either rule orally from the bench, stating findings of fact, conclusions of law, and an Initial Decision or a Final Decision in the record, or may issue and file written findings, conclusions, and an Initial or Final Decision with the Clerk who shall immediately serve copies upon all parties or their counsel of record. The ALJ shall render an Initial or Final Decision within the time provided by an applicable state statute or federal statute or rule or, in any event, within 30 days after the close of the hearing record unless the ALJ determines that the complexity of the issues and the length of the record require an order extending such period in which event the ALJ shall render an Initial or Final Decision at the earliest date practicable.

Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.27 entitled "Initial Decision" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995. **Amended:** Rule retitled "Initial or Final Decision." F. Feb. 27, 1997; eff. Mar. 19, 1997.

Rule 28 Motions for Reconsideration or Rehearing; Stay of Initial or Final Decision.

(1) A motion for reconsideration or rehearing of an Initial or Final Decision will be considered only if the motion is filed within 10 days of the entry of the Initial or Final Decision. However, the time for filing such a motion may be extended by the ALJ for good cause.

(2) The filing of such a motion shall not operate as a stay of enforcement of the Initial or Final Decision of the ALJ. However, the ALJ may grant a stay upon appropriate terms for good cause shown if the ALJ finds that the public health, safety, and welfare will not be harmed by the issuance of a stay.

(3) The ALJ shall not grant a motion for rehearing until after the expiration of the period for a response by any other party provided by Rule 16(2).

| Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.28 entitled "Motions for Reconsideration or Rehearing; Stay of Initial Decision" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995. **Amended:** R. Retitled "Motions for Reconsideration or Rehearing; Stay of Initial or Final Decision" adopted. F. Feb. 27, 1997; eff. Mar 19, 1997. **Amended:** F. Dec. 12, 2003; eff. Jan. 1, 2004.

Rule 29 Remands.

(1) The ALJ may, either on the ALJ's own motion or at the motion of any party, remand any matter to the Referring Agency at any time. In exercising discretion relating to the remand of a matter, the ALJ shall consider, among other things, the possible delay created by a remand and its impact upon the parties, the likelihood that a remand could cause a change in the position taken by the Referring Agency whose activity is being reviewed, and the need for the peculiar expertise and experience of the Referring Agency in insuring a just and orderly administrative process.

(2) The ALJ shall remand to the Referring Agency any matter contesting the denial of a permit or license in which the ALJ concludes that the denial was unlawful and shall include in a written order of remand the findings of fact and conclusions of law required by Rule 27.

Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.29 entitled "Remands" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995.

Rule 30 Default.

(1) If a party fails to participate in any stage of a proceeding, fails to file any pleading required by an ALJ, this chapter, or other applicable law or agency rule, or fails to comply with an order or subpoena issued by the ALJ, the ALJ, either on the ALJ's own motion or on the motion of any party, may enter a default order against the offending party. Any such order shall specify the grounds for the order.

(2) Any default order may provide for a default as to all issues, a default as to specific issues, or other limitations, including limitations on the presentation of evidence and on the defaulting party's continued participation in the proceeding. In determining whether to enter a default and in determining the appropriate penalty for a default, the ALJ shall give due regard for the interests of justice, the nature of the failure of the party in default, and the need for the orderly and prompt conduct of the proceeding.

(3) Within ten days of the entry of a default order, the party against whom it was issued may file a written motion requesting that the order be vacated or modified and stating the grounds for said motion. The ALJ may allow a default to be opened where the failure of the party in default was the result of providential cause or excusable neglect or where the ALJ, from all the facts, determines that a proper case has been made for the default to be opened on terms to be fixed by the ALJ.

(4) After issuing a default order, the ALJ shall conduct any further proceedings necessary to complete the proceeding without the participation of the party in default, or with such limited participation as determined appropriate under subparagraph (2) of this paragraph, and shall determine all issues in the proceeding, including those affecting the party in default.

(5) If a party fails to attend an evidentiary hearing after having been given written notice thereof, the ALJ may proceed with the hearing in the absence of the party unless the absent party is the party who requested the hearing in which case the ALJ may dismiss the action on the motion of any party or on the ALJ's own motion. Failure of a party to appear at the time set for hearing shall constitute a failure to attend unless excused by the ALJ for good cause.

Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.30 entitled "Default" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995. **Amended:** F. Feb. 27, 1997; eff. Mar. 19, 1997. **Amended:** F. Dec. 12, 2003; eff. Jan. 1, 2004.

Rule 31 Emergency and Expedited Proceedings. Whenever any hearing is required by law to be held pursuant to an expedited time frame inconsistent with these Rules, or whenever the ALJ, either on motion of any party or on the ALJ's own motion, determines that an expedited time frame is necessary to protect the interests of the parties or the public health, safety or welfare, the ALJ shall require such filing of pleadings and shall conduct the hearing in such manner as justice requires.

Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.31 entitled " Emergency and Expedited Proceedings" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995.

Rule 32 Recusal of ALJ.

(1) Any person serving as an ALJ is subject to disqualification in the specific case before the ALJ for bias, prejudice, interest, or any other cause provided for in this Rule.

(2) An ALJ shall be disqualified in any proceeding in which the ALJ's impartiality might reasonably be questioned, including but not limited to:

(a) instances where the ALJ has a personal bias or prejudice concerning a party or a party's lawyer or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the ALJ served as a lawyer in the matter in controversy, or a lawyer with whom the ALJ previously practiced law served during such association as a lawyer concerning the matter, or the ALJ has been a material witness concerning the matter; and

(c) the ALJ or the ALJ's spouse, a person within the third degree of relationship to either of them, the spouse of such a person, or any other member of the ALJ's family residing in the ALJ's household is a party to the proceeding or an officer, director, or trustee of a party, is acting as a lawyer or a party's representative in the proceeding, is known by the ALJ to have more than trivial interest that could be substantially affected by the proceeding, or is to the ALJ's knowledge likely to be a material witness in the proceeding.

(3) An ALJ shall keep informed about the ALJ's personal and fiduciary economic interests and make a reasonable effort to keep informed about the personal financial interests of the ALJ's spouse and minor children residing in the ALJ's household.

(4) An ALJ disqualified by the terms of this Rule may disclose on the record the basis of disqualification and may ask the parties and their lawyers to consider, out of the presence of the ALJ, whether to waive disqualification. If, following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the ALJ, all agree that the ALJ should not be disqualified, and the ALJ is then willing to preside, the ALJ may preside in the proceeding. The agreement shall be incorporated in the record of the proceeding.

(5) Any party may move for the disqualification of an ALJ promptly after receipt of notice indicating that the ALJ will preside or promptly upon discovering facts establishing grounds for disqualification, whichever is later.

(6) All petitions for the disqualification of an ALJ shall be made in writing and shall be accompanied by an affidavit setting forth definite and specific allegations which demonstrate the facts upon which the petition for disqualification is based. Any petition for disqualification shall be referred to another ALJ if the ALJ originally assigned to the matter determines that the affidavit is legally sufficient and that, assuming all the allegations of the affidavit are true, disqualification would be warranted. If the petition for disqualification is referred to another ALJ and that ALJ determines the petition to be meritorious, the ALJ originally assigned to the matter shall be disqualified.

Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.32 entitled "Recusal of ALJ" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995.

Rule 33 Transfer of the Record to the Referring Agency. Following the entry of an Initial Decision, the Clerk shall compile and certify the record of the hearing, including the Initial Decision and any tapes or other recordings of the hearing which have not been transcribed, to the Referring Agency. Unless the record has been certified to a reviewing court pursuant to Rule 39, sixty days following the entry of a Final Decision the Clerk shall compile and certify the record of the hearing, including the Final Decision and any tapes or other recordings of the hearing which have not been transcribed, to the Referring Agency.

| Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.33 entitled "Transfer of the Record to the Referring Agency" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995. **Amended:** F. Feb. 27, 1997; eff. Mar. 19, 1997.

Rule 34 Appearance by Attorneys; Signing of Pleadings.

(1) Except as authorized in paragraph (2) of this Rule or where specifically authorized by an applicable federal or Georgia statute or rule, no person shall represent any party in a proceeding before an ALJ unless the person is an active member in good standing of the State Bar of Georgia and has filed an entry of appearance in the case in the attorney's individual name. An entry of appearance shall not be required if a pleading, motion or other paper has previously been filed on the case by the attorney of record pursuant to paragraph (3) of this Rule.

(2) Nonresident attorneys who are not active members of the State Bar of Georgia may be permitted to appear before an ALJ in isolated cases upon motion to and in the discretion of the ALJ. A motion to appear in a particular case shall state that the movant is an active member in good standing of the bar of the jurisdiction in which the movant regularly practices and that the movant agrees to behave in accordance with the Georgia standards of professional conduct and the duties imposed upon attorneys by O.C.G.A. § 15-19-4.

(3) Every pleading, motion, or other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleadings and state the party's address. The signature of an attorney constitutes a certificate by the attorney that the attorney has read the pleading and that it is not interposed for any improper purpose, including, but not limited to, delay or harassment. If a pleading, motion, or other paper is signed in violation of this Rule the ALJ, upon motion of any party or upon the ALJ's own motion, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, including, but not limited to, dismissal.

Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.34 entitled "Appearance by Attorneys; Signing of Pleadings" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995. **Amended:** F. Feb. 27, 1997; eff. Mar. 19, 1997.

Rule 35 Involuntary Dismissal. After a party with the burden of proof has completed the presentation of its evidence, any other party, without waiving its right to offer evidence in the event the motion is not granted, may move for dismissal on the ground that the party which has presented its evidence has failed to carry its burden so as to demonstrate its right to some or all of the determinations sought by that party. The ALJ may then determine the facts and render an Initial or Final Decision against the party which has presented its evidence as to any or all issues or may decline to render an Initial or Final Decision until after the close of all the evidence.

| Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.35 entitled "Involuntary Dismissal" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995. **Amended:** F. Feb. 27, 1997; eff. Mar. 19, 1997. **Amended:** F. Dec. 12, 2003; eff. Jan. 1, 2004.

Rule 36 Alternative Dispute Resolution Program. OSAH has established an Alternative Dispute Resolution ("ADR") Program to provide a speedy, efficient, and inexpensive resolution of disputes. The *Uniform Rules for Dispute Resolution Programs* adopted by the Georgia Supreme Court that are applicable to contested civil actions shall be followed. Copies of the *Uniform Rules for Dispute Resolution Programs* are available at OSAH and on the Internet at <http://www.ganet.org/gadr/appendxa.html>.
Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.36 entitled "Alternate Dispute Resolution" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995. **Amended:** F. Feb. 27, 1997; eff. Mar. 19, 1997. **Amended:** R. Retitled "Alternative Dispute Resolution Program." F. Dec. 12, 2003; eff. Jan. 1, 2004.

Rule 37 Request for Agency Records.

(1) In any matter which could result in the revocation, suspension, or limitation of a license or permit, requests by the licensee or permit holder for exculpatory, favorable, or arguably favorable information relative to any pending issues concerning the license or permit shall be governed by O.C.G.A. § 50-13-18(d).

(2) Requests for access to public records pertaining to the subject of a pending matter shall be governed by O.C.G.A. § 50-18-70(e).

| Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.37 entitled "Request for Agency Records" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995.

Rule 38 Discovery. Discovery shall not be available in any proceeding before an ALJ except to the extent specifically authorized by a statute or rule. Nothing in this Rule is intended to limit the provisions of Article 4 of Chapter 18 of Title 50 or Rule 37.

Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.38 entitled "Discovery" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995.

Rule 39 Petitions for Judicial Review. A copy of any petition for judicial review of a Final Decision shall be filed with the Clerk by the party seeking judicial review simultaneously with the service of the petition upon the Referring Agency pursuant to the APA. Upon receipt of such a petition, the Clerk shall compile and certify the record of the hearing to the reviewing court on behalf of the Referring Agency.

| Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.39 entitled "Petitions for Judicial Review" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995. **Amended:** F. Feb. 27, 1997; eff. Mar. 19, 1997.

Rule 40 Petitions for Civil Penalties in Department of Natural Resources' Matters.

(1) Whenever an official within the Department of Natural Resources (hereinafter the "DNR Official") determines to seek the imposition of civil penalties, the DNR Official shall file a petition for hearing with the Clerk.

(2) A petition for hearing on civil penalties shall contain:

(a) A statement of the legal authority and jurisdiction under which a hearing is requested;

(b) A statement of each specific section (including subsection and paragraph if applicable) of the laws or rules alleged to have been violated;

(c) A short and plain statement of the facts asserted as the basis of the alleged violation(s); and

(d) The amount of civil penalty which is proposed to be imposed.

(3) Upon the filing of such a petition, the Clerk shall forthwith issue a summons for each person or entity from whom civil penalties are sought (hereinafter the "respondent") and deliver the summons to the DNR Official for service. Such a summons shall be signed by the Clerk, be directed to the respondent, and contain the name of the forum to which the respondent is summoned, the name and address of counsel for the DNR Official, and a statement of the requirements of subparagraph (4) below. Each summons, with a copy of the petition for hearing attached, shall be served by the DNR Official by certified mail or personal service upon the respondent. A return of service for each summons and petition shall be filed with the Clerk promptly after service.

(4) Within 30 days of service of the summons and petition, the respondent shall file with the Clerk and serve upon the DNR Official a response to all allegations set forth in the petition. The response shall address all factual allegations set forth in the petition and shall include any affirmative defenses to be presented by the respondent. Any allegations of fact contained in the petition for hearing shall be deemed admitted unless they are specifically denied, or unless the respondent lacks knowledge or information sufficient to form a belief as to the truth thereof and so states, in the response.

Authority O.C.G.A. Sec. 50-13-40(c). **History.** ER 616-1-2-0.2 was f. on Mar. 23, 1995; eff. Apr. 1, 1995, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER, as specified by the Agency. **Amended:** ER 616-1-2-0.2 repealed and R. 616-1-2-.40 entitled "Petitions for Civil Penalties in Department of Natural Resources' Matters" adopted. F. Jun. 30, 1995; eff. Jul. 20, 1995.

Rule 41 Continuances and Conflicts.

(1) All motions for continuances shall only be granted upon a showing of good cause and shall not be granted simply because the parties and/or their counsel agree thereto. Among other factors the ALJ may consider in connection with a motion for continuance are the impact of the continuance upon any parties who do not consent to the motion, the ALJ's calendar, the difficulty in rescheduling the hearing site, the need for an expeditious resolution of the matter(s) at issue, and the public health, safety and welfare. A notice of conflict filed pursuant to paragraph (2) below shall not be considered as a motion for a continuance unless the notice expressly requests a continuance.

(2) In the event an attorney has a conflict involving an appearance in an OSAH proceeding and another legal proceeding, the requirements of the Uniform Rules for the Superior Courts shall be followed.

| Authority O.C.G.A. Sec. 50-13-40(c). **History.** Original Rule entitled "Continuances and Conflicts." adopted. F. Feb. 27, 1997; eff. Mar. 19, 1997.

Rule 42 Withdrawals and Leaves of Absence. The withdrawal and leave of absence provisions of the Uniform Rules for the Superior Courts shall be followed.

Authority O.C.G.A. Sec. 50-13-40(c). **History.** Original Rule entitled "Motions to Withdraw and Applications for Leaves of Absence." adopted. F. Feb. 27, 1997; eff. Mar. 19, 1997. **Amended:** R. Retitled "Withdrawals and Leaves of Absence." F. Dec. 12, 2003; eff. Jan. 1, 2004.

Rule 43 Electronic and Photographic News Coverage of Administrative Proceedings. In all administrative hearings open to the public, persons desiring to broadcast/record/photograph any portion of an OSAH proceeding must file a timely written request with the ALJ involved prior to the hearing. The request shall specify the particular proceedings for which such coverage is requested, the type equipment to be used in the courtroom, and the person responsible for installation and operation of such equipment. The ALJ shall resolve such request in the manner prescribed for such a request by the Uniform Rules for the Superior Courts.

| Authority O.C.G.A. Sec. 50-13-40(c). **History.** Original Rule entitled "Electronic and Photographic News Coverage of Administrative Proceedings." adopted. F. Feb. 27, 1997; eff. Mar. 19, 1997.